

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 970D-157
Oahu

Amend Prior Board Action of December 8, 2006, Item D-14,

Approval in Principle of an Exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02 & 20 and Privately-Owned Land at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-04:02, and

Rescind Prior Board Action of October 28, 1994 Under Agenda Item F-13, Amendment to Prior Board Action of February 12, 1988 (Agenda Item F-24) Relating to an Agreement to Partition Land at Niu Valley, Honolulu, Oahu; Accept Quitclaim to a Portion of Property; Issue Quitclaims to the Remainder of Property; and Set Aside to the Division of Forestry and Wildlife, TMK 3-7-04: 01, 02 & 20.

To Reflect Parties' Intent to Exchange Present and Future Interests in Land Situated at Niu, Honolulu, Further Identified as Tax Map Keys: (1) 3-7-04:01, 02, 20 and 21

BACKGROUND:

At its meeting of December 8, 2006, under agenda item D-14, the Board of Land and Natural Resources ("BLNR") approved in principle a proposed exchange whereby the State of Hawaii would relinquish its springing executory interest¹ covering Hawaiian Humane Society's ("HHS") undivided .520183968 fee simple interest in approximately 680.846 acres of land, previously referred to as TMKs (1) 3-7-04:01, 02 and 20.

¹ The undivided .520183968 fee simple interest held by HHS is subject to the land being "used for the benefit of the public for the operation of an educational preserve for flora and fauna, to be made accessible as an educational experience for the public under the control and administration of said Hawaiian Humane Society and its successors and assigns, and, if not so used, then to State of Hawaii and its successors and assigns, for and as a public park." Consequently, the State holds a springing executory interest in said land.

In exchange for said interest, the State would receive a 100% undivided interest in approximately 263 acres of land, identified as TMK (1) 3-7-04:02.

REMARKS:

Subsequent research indicates, however, that on March 28, 1996, the City and County of Honolulu approved Tiana and HHS's application to subdivide TMK (1) 3-7-04:01 ("Parcel 1"), which at the time contained a land area of approximately 412.749 acres. As a result of this subdivision, Parcel 1 was reduced to 408.824 acres, with the remaining 3.925 acres being allocated to what is currently identified as TMK (1) 3-7-04:21 ("Parcel 21") as shown on Exhibit A, attached. Parcel 21 remains subject to the State's springing executory interest.

Public records indicate Parcel 21 is vacant, within the State Land Use Urban District, and is zoned R-7.5 Residential by the City and County of Honolulu.

Notwithstanding the approved subdivision, the Memorandum of Understanding ("MOU") dated September 11, 2006 between Tiana Partners ("Tiana") and HHS did not identify Parcel 21. Consequently Parcel 21 was not identified in the BLNR action of December 8, 2006, under agenda item D-14.

This oversight was recently brought to the attention of Tiana and HHS. Consequently, Tiana and HHS have submitted an amendment to the MOU (Exhibit B), such to include Parcel 21, with all other conditions and terms of the MOU to remain the same. Similarly, Tiana and HHS request that BLNR amend its prior action of December 8, 2006, under agenda item D-14, by including the State's springing executory interest in TMK (1) 3-7-04:21 in the proposed exchange.

Subject to BLNR approval and pursuant to §171-50, Hawaii Revised Statutes, and subject also to judicial approval as required by the MOU, the State will relinquish its springing executory interest in TMKs (1) 3-7-04:01, 02, 20 and 21. In exchange for its interest the State will acquire the 100% undivided fee interest in TMK (1) 3-7-04:02, together with access and trail easements.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of December 8, 2006, under agenda item D-14 by adding TMK (1) 3-7-04:21 under the terms and conditions cited above which are by this reference incorporated herein; and
2. All other terms and conditions listed in its December 8, 2006 approval of agenda item D-14 to remain the same.

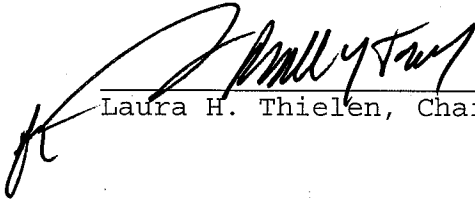
December 14, 2007

Respectfully Submitted,



Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



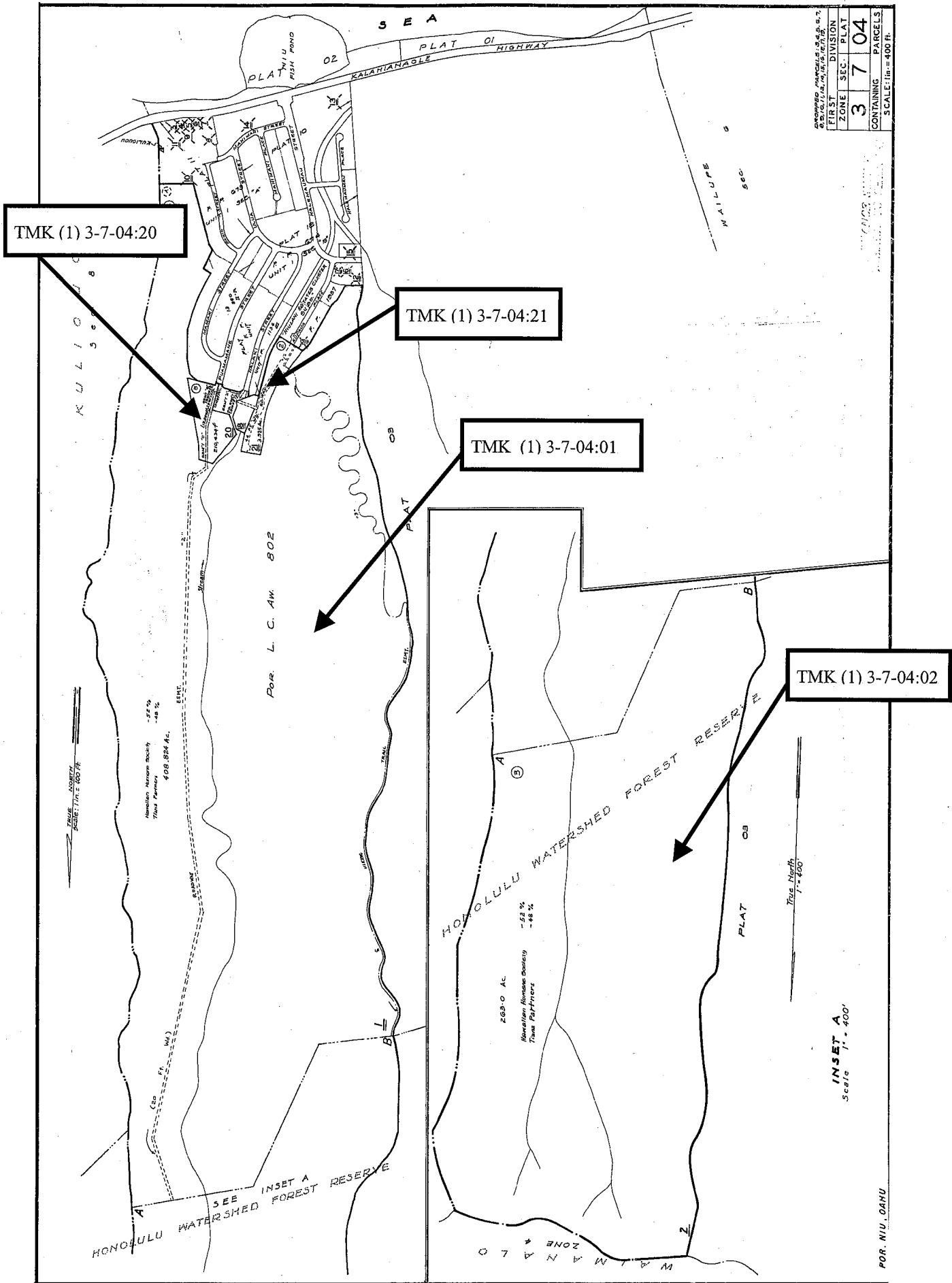


EXHIBIT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Memorandum"), dated as of September 11, 2006, is entered into by and between Tiana Partners, a Hawaii general partnership ("Tiana Partners") and the Hawaiian Humane Society, a Hawaii nonprofit corporation (the "Humane Society").

Background

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L.L.T.

1. On December 28, 1976, Clorinda Lucas made a charitable gift to the Humane Society of a 50.6183968% undivided interest in 689.846 acres of land (the "Land") located in Niu Valley identified by TMKs (1) 3-7-04:01, 02, and 20. The deed to the Humane Society provided that the Land "...shall be used for the benefit of the public for the operation of an educational preserve for flora and fauna, to be made accessible as an educational experience for the public under the control and administration of said Hawaiian Humane Society..." On December 30, 1982, Clorinda Lucas conveyed an additional 1.4% undivided interest in the Land to the Humane Society, subject to the same use restrictions. Each of the deeds provided that the interest of the Humane Society would be forfeited to the State of Hawaii for use as a public park if the Humane Society failed to use the land for its intended purpose. Upon the death of Clorinda Lucas, her interest in the Land passed through her estate and is now held by Tiana Partners, a partnership formed by her daughter, Laura Thompson, and Laura's children and grandchildren, all of whom have resided on the Land for years in a family compound.

2. During the years after the gift, the Humane Society made numerous attempts to find a feasible way to use the Land to further the Humane Society's mission of teaching compassion and respect for all living things, promoting responsible behavior toward animals and the natural environment, and helping to create a community that embraces humane values. Over this period of time many different ideas have been considered by the Humane Society and by Tiana Partners. During 2004 and 2005 the Humane Society and Tiana Partners held a series of meetings with each other and with a number of community organizations and individuals, to try

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to identify potential uses for the Land that would be consistent with the intent of the gift and would be beneficial to the community while being physically and economically feasible.¹

3. One of the overriding considerations in the discussions of the potential uses of the Land was peaceful coexistence with the Thompsons and with the other neighbors in the area. The issue of access to the property became a key consideration. There are only two public roads that access the Niu land, Puamamane Street, and Kupaua Place. Puamamane Street accesses the property on the side where the Thompsons' residences are located. Using that access for a public use by the Humane Society would necessarily involve serious interference with the ongoing residential use by the Thompsons. The other access, Kupaua Place, is an extremely narrow road that would not be easily usable, especially for bus traffic, without a serious disruptive impact on the neighbors. To further evaluate these obstacles, in 2004, the Humane Society commissioned a feasibility study of potential projects on the Land from urban planners Helber, Hastert and Fee. This study, and subsequent discussions with the Thompsons made it clear that using any significant portion of the Land for an educational preserve accessible to the public would be extremely expensive and impractical and would involve serious disruption of the Thompson family compound and the rest of the neighborhood. This ultimately led to consideration of ways of converting the interest of the Humane Society to money and using the money to further the intent of the original gift.

4. In January, 2005, a Memorandum of Understanding between the Humane Society and Tiana Partners was signed, calling for the parties to jointly retain an appraisal firm to appraise the interest of the Humane Society in order to help the Humane Society and Tiana Partners agree on a price for which Tiana Partners would purchase the interest of the Humane Society. The appraisal report was completed and delivered to both Tiana Partners and the Humane Society in July, 2005. The report established a value of \$462,100 for the Humane Society's interest subject to the use restriction and \$1,703,600 for the interest free of the restriction and without any discount for partial ownership. The mid-point between these two values is \$1,082,850. There ensued several meetings and discussions with the appraiser to

¹ This group included, among others, Marion Lyman-Mercereau (Punahou School Character Education), Mary Harbold (Honolulu Zoo), Greg Dunn (Hawaii Nature Center), Kathy Rothschild (Humane Society Administrator of Humane Education), Judy Nagasako (Department of Education Director of Character Education), Maura O' Connor (Environmental Education Designer), and Colleen Muarakami (Department of Education Environmental Education).

clarify his results and then several follow up meetings with Tiana Partners resulting in the agreement in principle set forth below.

Understandings

1. Subject to the approvals described below, the Humane Society and Tiana Partners shall effect the following conveyances:

(a) Land Exchange With the State. Subject to the agreement of the Board of Land and Natural Resources of the State of Hawaii ("BLNR"), and subject to no disapproval by the legislature under the provisions of Section 171-50, Hawaii Revised Statutes, and subject to the approval of the Probate Court for the First Circuit of the State of Hawaii (the "Probate Court"), the Humane Society and Tiana Partners shall each convey their interests in "Parcel C", consisting of approximately 200 acres of the mauka portion of the Land, together with access and trail easements, to the State of Hawaii (the "State") in exchange for the conveyance by the State to Tiana Partners of the State's contingent reversionary interest in the remaining portions of the Land ("Parcels A and B");

(b) Conveyance of Humane Society's Interest to Tiana. Subject to the approval of the Probate Court, the Humane Society shall convey its 52.0184% interest in Parcels A and B to Tiana Partners free and clear of the use restrictions contained in the deeds to the Humane Society, in exchange for the sum of \$1,082,850 in cash (the "Cash") and the agreement of Tiana Partners that if Tiana Partners shall voluntarily sell all or any portion of Parcels A and B (other than a transfer to the State of Hawaii) during the ten-year period following the date of the transfer, Tiana Partners shall pay to the Humane Society a share of the gross proceeds of any such sale equal to three percent multiplied by the number of years fewer than ten elapsed from the date of the transfer to the date of such sale (e.g., if a sale took place five years after the transfer, the Humane Society would be entitled to 15% ($3\% \times 5$ years); if a sale took place eight years after the transfer, the Humane Society would be entitled to 6% ($3\% \times 2$ years)).

2. Promptly after it is received, the Humane Society shall use the Cash, and any additional proceeds resulting from a transfer by Tiana, to establish a segregated fund to be known as the "Charles and Clorinda Lucas Educational Fund", the principal and interest of which fund shall be used exclusively to pay the costs associated with educational programs designed to foster compassion and caring for all life, focused on the interdependent relationship between animals, humans and the environment and on our roles as stewards and caregivers.

3. Tiana Partners and the Humane Society shall cooperate with each other in seeking the approvals of BLNR and the Probate Court, and shall share equally any out-of-pocket costs

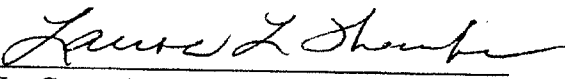
incurred in that connection, including, without limitation, the cost of all necessary appraisals and the cost of a Phase I environmental inspection of Parcel C.

4. This Memorandum may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same instrument. Facsimile signatures may serve in the place of original signatures.

5. Except for the provisions of paragraphs 3 and 4, this Memorandum is not legally binding upon Tiana Partners or the Humane Society. A legally binding obligation of the Humane Society to convey its interest in the Land to Tiana Partners and of Tiana Partners to pay the sums set forth above, shall only be created upon the execution and delivery of a purchase and sale agreement and related documents all of which shall be satisfactory in form and substance to both Tiana Partners and the Humane Society.

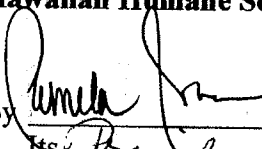
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed as of the date first written above, *with the understanding that except as provided above, this Memorandum is not legally binding upon either party.*

Tiana Partners

By 
Its General Partner

By _____
Its General Partner

Hawaiian Humane Society

By 
Its President + CEO

By _____
Its